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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 826

WINONA MAE FOSTER, Petitioner,

v.

STATE OF OREGON, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINION BELOW

The opinion of the Supreme Court of Oregon is reported in Volume 83, Oregon Advance Sheets, No. 1, page 95.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether petitioner's constitutional rights were violated by failure of police officers to advise her of her rights immediately after arrest, though admittedly having been so advised when she became a focal suspect.

STATEMENT

Respondent accepts the statement of the case set forth in the Petition.

REASONS FOR DENYING THE WRIT

1. Petitioner asserts a denial of the procedural requirements set forth in **Miranda vs. Arizona,** 384 U.S. 436 (1966), and **Escabedo vs. State of Illinois,** 378 U.S. 478 (1964). The **Miranda** decision is absolutely inapplicable in this case because petitioner's trial was concluded October 27, 1965, and this Court has held that **Miranda** does not apply to cases in which the trial began before June 13, 1966. **Cassidy vs. State of New Jersey,** ____ U.S. ____, 16 L. Ed. 2d 882, (1966). The **Escobedo** opinion is admittedly applicable because petitioner's trial began after June 22, 1964. **Ibid.**

2. The gravamen of petitioner's argument apparently is that she was not advised of her constitutional rights subsequent to arrest, though admitting she was so advised a brief time before the actual arrest. Respondent respectively submits that the Court need not take jurisdiction in this case because the procedural requirements of the **Escobedo** decision were met, by petitioner's own admission. (Petitioner's Brief, page 3).

3. There was approximately a half hour delay between the time petitioner presented herself at the police station and was advised of her constitutional rights and the time when she was booked in at the jail and admitted participating in the crime charged. Petitioner's sole allegation is that failure to re-advise her after formal arrest should be grounds for reversal. She alleges none of the facts present in the **Escobedo** case, or for that matter any substantive allegation which impugns the trustworthiness or voluntariness of her statement or any criticism whatever of the circumstances in which it was obtained. She does not allege coercion, refusal of access to counsel or

friends, or pressure of any kind prepartory to her statement. The **Escobedo** decision requires that a focal suspect be advised of his constitutional rights, but no where asserts that the advice must, of necessity, be repeated after the formal arrest. **Escobedo vs. State of Illinois,** 378 U. S. 478 (1964).

CONCLUSION

Respondent submits that no real question is presented for the Court to decide and asks that the Petition for a writ of certiorari be denied.

Respectfully submitted,

/s/ Gary D. Gortmaker
Counsel for Respondent